IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2239 OF 2004.

Irfan Rauf Qureshi. ... Petitioner
Versus.
The Deputy Commissioner of Police,
Nashik City and another. ... Respondents.

Shri A.R.Shaikh for the Petitioner.

Ms.M.H.Mhatre, A.P.P. for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 13th October, 2005.

P.C.:

1. The challenge in this petition is to the order of externment passed against the Petitioner by the Respondent No.1 by order dated 6th August 2004. By the said order, the Petitioner was externed from the limits of Nashik City and Nashik Rural District for a period of one year. Though the period of one year has expired and the order cannot be implemented now, the Advocate for the Applicant has argued the case on merits as, according to him, if the order is confirmed, the same will come in the way of the Petitioner and the same will be a stigma on the Petitioner.

2. The submission made by the learned Advocate for the Petitioner is that the order of externment has been passed on the basis of show cause notice dated 7th July 2005. Placing reliance on the decision of the Division

Bench of this Court reported in 1992 Mah.L.J.page 225 (Nanhekhan Gulabkhan Pathan v/s. State of Maharashtra and others), he submitted that initial show cause notice was given by the Assistant Commissioner of Police who held an the enquiry on the basis of the said notice and in the subsequent notice dated 7th July 2004 issued by the Respondent No.1 no particulars of the allegations are not mentioned. He, therefore, submitted that on this ground alone the order deserves to be set aside as there is a breach of principles of natural justice. The learned A.P.P. supported the impugned order by pointing out the material against the Petitioner.

3. I have considered the submissions. Initially a show cause notice was issued on 14th May 2004 by the Assistant Commissioner of Police setting out the grounds on which the proposed order of externment was to be passed. The Petitioner replied to the said notice issued by the Assistant Commissioner of Police. On the basis of the recommendation of the Assistant Commissioner of Police, a fresh show cause notice dated 7th July 2004 was issued by the Deputy Commissioner of Police. In the said notice no particulars whatsoever are given of the allegations against the Petitioner on the basis of which order of externment was proposed to be passed. Though the Petitioner appeared before the Respondent No.1 the Deputy Commissioner of Police, an order has been passed by the Deputy Commissioner of

Police only on the basis of the report of the Assistant Commissioner of Police. There is no reference in the order of externment to the contentions raised in the reply filed by the Petitioner and it appears that even the contention raised in the reply given to the earlier show cause notice issued by the Assistant Commissioner of Police are not considered by the Respondent No.1. The Division Bench of this Court in Nanhekhan's case (supra) has held thus:

> "It is in that view of the matter, the power conferred upon the externing authority under section 56, though conferred in abundant amplitude and affecting as it does the fundamental rights of a citizen has to be exercised in strict conformity with the provisions of sub-section (1) of section 59 of the Act. Looked at from the angle the section 59 of the Act makes it imperative for the externing authority passing ultimate order under section 56(1)(a) to give the hearing to the proposed externee and that statutory obligation cannot be said to have been discharged merely because the proposed externee was given opportunity of being heard by the subordinate police officer, who is not the competent authority to pass the ultimate order of externment. If we were to accept the

contention of Shri Bhapkar, learned Additional Public Prosecutor, that there was no need to give personal hearing to the proposed externee when the respondent No.3 has heard in person, the right conferred on the proposed externee would become an empty formality. It is an accepted principle that if one person hears and another decides then the personal hearing becomes an empty formality. This principle can be supported from the decision of /Supreme court in the case of Gullapalli Nageshwara Rao and others v/s. Andhra Pradesh State Road Transport Corporation and another, AIR 1959 SC 308. There would be no decision within the meaning of statute if there was anything of that sort done contrary to the essence of justice."

4. In my view the order of externment passed by the Respondent No.1 is in violation of the principles of natural justice and only on the said ground the impugned order deserves to be quashed and set aside. Accordingly the petition is allowed and Rule is made absolute in terms of prayer clause (a).

Judge.